

DHC

*1 copy also to Mr Gardiner /
Legal Adviser ✓*

*Mr B
15/10*

NOTE FOR THE RECORD

CANADIAN CONSTITUTION

*Mr Irving } a.o.
Mr Berthoud }*

I met Judge Estey of the Canadian Supreme Court last night and we talked about constitutional developments.

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2. Judge Estey said that he had studied the Draft Bill attached to the Resolution and thought it defective in law. It seemed to him to have taken no account of the development of the UK's constitutional practice of granting freedom to ex-colonies since the grant of independence to India. In the later Constitutional Acts, such as that granting Kenya's independence, an effective method had been worked out for cutting the legal umbilical cord between the mother country and the new state, under which the new state had authority to repeal the Order in Council under which the transfer was made. The fact that the Indian constitutional instrument was defective had led to a lot of tiresome litigation afterwards and he feared that if the Canadian Bill was passed in its present form the Canadian courts would be in for a lot of trouble. He said that he had mentioned his fears to an official of the Department of Justice.

3. In answer to my question he said that he thought that there was a possibility that the legality of the Federal Government's proposed Resolution might be called in question. He thought that if a province did issue a writ the Federal Government would probably take the action over and submit the case itself to the Supreme Court to save time. In that event a decision might be forthcoming in about two months.

4. Judge Estey said that he had returned last week from a trip out West and had been much struck by the alienation of the population from the Federal Government. He had addressed a group of young lawyers and found them alarmingly indifferent to the concept of Canada and said that he had talked to Premier Blakeney of Saskatchewan, who would like to exercise some positive role to solve the crisis but was fearful that he would lose the support of his electorate. Judge Estey thought that the province to watch closest was British Columbia, which, in his view, would be likely to be the first to take action. Whatever happened over the present debate in the Federal Parliament Judge Estey thought that the damage to Canada would take years to heal.

off.

John Ford

9 October 1980

cc: Sir Ian Sinclair KCMG QC, Legal Adviser
✓ M S Berthoud Esq, NAD CONFIDENTIAL